

Department of Energy

§ 709.31

§ 709.24 What other information is provided to the individual prior to a polygraph examination?

Before administering the polygraph examination, the examiner must:

- (a) Inform the individual of the use of audio and video recording devices and other observation devices, such as two-way mirrors and observation rooms;
- (b) Explain to the individual the characteristics and nature of the polygraph instrument and examination;
- (c) Explain the physical operation of the instrument and the procedures to be followed during the examination;
- (d) Review with the individual the control questions and relevant questions to be asked during the examination;
- (e) Advise the individual of the individual's privilege against self-incrimination; and
- (f) Provide the individual with a pre-addressed envelope addressed to the D/OCI in Washington, D.C., which may be used to submit comments or complaints concerning the examination.

§ 709.25 Are there limits on use of polygraph examination results that reflect "deception indicated" or "no opinion"?

- (a) DOE or its contractors may not:
 - (1) Take an adverse personnel action against an individual solely on the basis of a polygraph examination result of "deception indicated" or "no opinion"; or
 - (2) Use a polygraph examination that reflects "deception indicated" or "no opinion" as a substitute for any other required investigation.
- (b) The Secretary or the D/OCI may suspend an individual's access based upon a written determination that the individual's admission of involvement in one or more of the activities covered by the counterintelligence polygraph, when considered in the context of the individual's access to one or more of the high risk programs identified in § 709.4(a)(1)–(8), poses an unacceptable risk to national security or defense. In such cases, DOE will investigate the matter immediately and make a determination of whether to revoke the individual's access.

§ 709.26 How does DOE protect the confidentiality of polygraph examination records?

- (a) DOE owns all polygraph examination records and reports.
- (b) Except as provided in paragraph (c) of this section, the Office of Counterintelligence maintains all polygraph examination records and reports in a system of records established under the Privacy Act of 1974, 5 U.S.C. 552a.
- (c) The Office of Intelligence also may maintain polygraph examination reports generated with respect to individuals identified in § 709.4(a)(2) in a system of records established under the Privacy Act.
- (d) Polygraph examination records and reports used to make AAAP determinations or generated as a result of an exculpatory personnel security polygraph examination are maintained in a system of records established under the Privacy Act of 1974.
- (e) DOE must afford the full privacy protection provided by law to information regarding an employee's refusal to take a polygraph examination.
- (f) With the exception of the polygraph report, all other polygraph examination records are destroyed ninety days after the eligibility evaluation is completed, provided that a favorable recommendation has been made to grant or continue the access to the position. If a recommendation is made to deny or revoke access to the information or involvement in the activities that justified conducting the polygraph examination, then all the records are retained at least until the final resolution of any request for reconsideration by the individual or the completion of any ongoing investigation.

Subpart D—Polygraph Examination and Examiner Standards

§ 709.31 What are the DOE standards for polygraph examinations and polygraph examiners?

- (a) DOE adheres to the procedures and standards established by the Department of Defense Polygraph Institute (DODPI). DOE administers only DODPI approved testing formats.
- (b) A polygraph examiner may administer no more than five polygraph examinations in any twenty-four hour